

AMENDED IN SENATE APRIL 12, 2004

**SENATE BILL**

**No. 1506**

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**Introduced by ~~Senator Murray~~ *Senators Murray and Brulte***  
*(Principal coauthors: Assembly Members Chavez and McCarthy)*

February 19, 2004

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An act to amend Section 653v of, and to add Section 653aa to the Penal Code, relating to Internet piracy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1506, as amended, Murray. Internet piracy.

Existing federal law, through copyright, provides authors of original works of authorship, as defined, with certain rights and protections. Existing federal law generally gives the owner of the copyright the right to reproduce the work in copies or phonorecords and the right to distribute copies or phonorecords of the work to the public. Existing federal law limits the liability of an Internet service provider for copyright infringement for transmitting material under specified conditions. Existing law also provides for the forfeiture and destruction of articles upon which sounds or images can be stored, and electronic and other devices used in reproducing those articles, in connection with a violation of provisions prohibiting misappropriation of recorded music, sounds of a live performance, or an audiovisual works, as specified.

This bill would provide that it is a crime, punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment for a person who is ~~not the copyright owner~~ *located in California, who knows that a particular recording or audiovisual work is commercial*, to knowingly electronically disseminate ~~a~~ *all or substantially all of that* commercial

recording or audiovisual work without disclosing his or her true name and address, and the title of the recording or audiovisual work. This bill would define electronic dissemination as initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network, as specified. This bill would provide that this provision would not apply to a person who electronically disseminates a commercial recording to his or her immediate family or within his or her personal network, as defined, *to a person who electronically disseminates a commercial recording or audiovisual work to 10 or fewer persons, or to a situation in which the copyright owner has explicitly given permission for all or substantially all of that recording or audiovisual work to be freely disseminated.* This bill would also provide that a court may order the forfeiture and destruction of articles upon which sounds or images can be stored, electronic files, and electronic and other devices in connection with a violation of these provisions.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 653v of the Penal Code is amended to  
2 read:  
3 653v. Whenever any person is convicted of any violation of  
4 Section 653h, 653s, 653u, 653w, or 653aa the court, in its  
5 judgment of conviction, shall, in addition to the penalty therein  
6 prescribed, order the forfeiture and destruction or other disposition  
7 of all articles, including, but not limited to, phonograph records,  
8 discs, wires, tapes, films, electronic files, or any other article upon  
9 which sounds or images can be recorded or stored, and any and all  
10 electronic, mechanical, or other devices for manufacturing,  
11 reproducing or assembling these articles, which were used in



connection with, or which were part of, any violation of Section 653h, 653s, 653u, or 653w.

SEC. 2. Section 653aa is added to the Penal Code, to read:

653aa. (a) Any person who is ~~not the copyright owner who~~ *located in California, who, knowing that a particular recording or audiovisual work is commercial,* knowingly electronically disseminates ~~all or substantially all of that~~ commercial recording or audiovisual work without disclosing his or her true name and address, and the title of the recording or audiovisual work is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

(b) Subdivision (a) does not apply to:

(1) *To a person who electronically disseminates a commercial recording or audiovisual work to his or her immediate family, or within his or her personal network, defined as a restricted access network controlled solely by by and accessible to only that person or people in his or her immediate household.*

(2) *To a person who electronically disseminates a commercial recording or audiovisual work to 10 or fewer persons.*

(3) *If the copyright owner, or a person acting under the authority of the copyright owner, of a commercial recording or audiovisual work has explicitly given permission for all or substantially all of that recording or audiovisual work to be freely disseminated electronically by or to anyone without limitation.*

(c) For purposes of this section:

(1) ~~“Recordings”~~ “Recording” means the electronic or physical embodiment of any recorded images, sounds, or images and sounds, *but does not include audiovisual works or sounds accompanying audiovisual works.*

(2) “Audiovisual ~~works~~ work” means the electronic or physical embodiment of motion pictures, television programs, *video or computer games,* or other ~~dramatic~~ audiovisual presentations that consist of related images that are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, or a computer program, software, or system, as defined in Section 502, together with accompanying sounds, if any.

(3) “Commercial recording or audiovisual work” means a recording or audiovisual work whose copyright owner, or

1 assignee, authorized agent, or licensee, has made or intends to  
2 make available for sale, rental, or for performance or exhibition *to*  
3 *the public* under license, *but does not include a licensed excerpt*  
4 *consisting of less than substantially all of a recording or*  
5 *audiovisual work.* A recording or audiovisual work may be  
6 commercial regardless of whether the person who electronically  
7 disseminates it ~~personally~~ seeks commercial advantage or private  
8 financial gain from that dissemination.

9 (4) “Electronic dissemination” means initiating a  
10 transmission of, making available, or otherwise offering, a  
11 commercial recording or audiovisual work for distribution on the  
12 Internet or other digital network, regardless of whether someone  
13 else had previously electronically disseminated the same  
14 commercial recording or audiovisual work.

15 (5) “True name and address” means information that  
16 accurately identifies the name of the person who is disseminating  
17 the commercial recording or audiovisual work, ~~along with his or~~  
18 ~~her valid e-mail or mailing address.~~ *and his or her mailing address,*  
19 *valid e-mail address, or the valid e-mail address of the holder of*  
20 *the account from which the dissemination took place.*

21 (6) “Disclosing” means providing information in, attached to,  
22 or discernable or available in or through the process of  
23 *disseminating or* obtaining a commercial recording or audiovisual  
24 *work in a manner that is accessible by any person engaged in*  
25 *disseminating or receiving the commercial recording or*  
26 *audiovisual work.*

27 (d) Nothing in this section shall preclude prosecution under any  
28 other provision of law.

29 SEC. 3. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.